

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

DOLORES AGUILAR, M.D.)
800 West 1st Street, #710)
Los Angeles, Ca 90012)

No. D 4990
OAH No. L 58933

Physician's and Surgeon's)
Certificate No. A22762,)

DECISION

Respondent.)
_____)

The attached Proposed Decision of the Administrative
Law Judge is hereby adopted by the Medical Board of California as
its Decision in the above-entitled matter.

This Decision shall become effective on December 17
_____, 1993.

IT IS SO ORDERED this 18th day of November,
1993.

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Neresa J. Claassen

MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	No. D-4990
against:)	
)	L-58933
DOLORES AGUILAR, M. D.)	
800 West 1st Street, #710)	
Los Angeles, California 90012)	
)	
Physician's and Surgeon's)	
Certificate No. A22762,)	
)	
Respondent.)	
_____)	

PROPOSED DECISION

This matter came on regularly for hearing before Paul M. Hogan, Administrative Law Judge of the Office of Administrative Hearings, State of California, at Los Angeles, California on June 3, 1993 and continued from judicial day to day thereafter until concluded on June 17, 1993.

Complainant was represented by Elisa B. Wolfe, Deputy Attorney General. Respondent appeared personally without counsel.

At the outset of the hearing, complainant moved to file a supplemental accusation against respondent dated May 27, 1993. The motion was granted, however the hearing was bifurcated to allow evidence at the present hearing only as to the allegations contained in the original accusation. No evidence was presented in support of the charges contained in the supplemental accusation, and its allegations remain in issue between the parties.

The parties presented evidence, both oral and documentary, and the record was closed on June 17, 1993, and an order then made allowing the parties to present final argument by way of concurrent letters to be filed on or before June 28, 1993.

On June 28, 1993, respondent filed a letter in response to the above-mentioned order, but also filed in addition thereto certain evidentiary materials which she neglected to copy and send to Ms. Wolfe. Accordingly, a statutory notice of ex parte contact was filed and served, and ultimately, on July 28, 1993, the additional evidentiary material was, on motion of complainant, stricken from the record, and the matter resubmitted on July 28, 1993.

The matter of the original accusation now having been fully heard, argued and submitted for decision, the Administrative Law Judge makes his findings of facts, determinations of issues, and renders his proposed decision as follows:

FINDINGS OF FACT

I

This action was initiated by Kenneth J. Wagstaff, the then Executive Director of the Medical Board of California, who filed the original accusation herein while acting solely in his official capacity.¹

II

On or about March 29, 1968, the Medical Board of California issued Physician's and Surgeon's Certificate No. A-22762 to DOLORES Y. AGUILAR, M.D. ("respondent"). Said certificate was, at all times mentioned herein, in full force and effect. The certificate currently is in a retired status.

III

During the period August 10, 1982 through November 14, 1982, patient L.R. was under the care and management of respondent who undertook act as the patient's obstetrician in connection with her existing pregnancy and anticipated delivery.

IV

On October 6, 1982 patient L.R. visited respondent. Respondent examined the patient and found the height of the uterine fundus to be but 16 cm. when the fetus was believed to be 21 to 22 weeks of age. Respondent's records do not show

¹Mr. Wagstaff's successor in office is Dixon Arnett who filed the supplemental accusation, and is presently maintaining this action as complainant.

consistent fetal growth, and, on October 6, respondent indicated that fetal heart tones were "questionable."

Notwithstanding these discrepancies, respondent failed to follow up her initial examination by examining further into them. In the face of indications of possible small gestational age, growth retardation or fetal death, respondent failed to conduct an ultra-sound examination to determine the exact fetal size and condition of the fetus. In the event of fetal death, her patient could be exposed to the risk of infection, hemorrhage or blood clotting problems, singly or in combination. Respondent's failure to conduct a more extensive examination of her patient on October 6, 1982 constituted an extreme departure from the standards of obstetrics as they existed in Southern California in 1982.

V

On November 4, 1982, respondent hospitalized L.R. on her complaint of severe epigastric pain. Initial examination by the nurses on admission revealed severe epigastric pain, shortness of breath, edema, 4 plus albumin, marked "jumpiness," and blood pressures of 180/110 and 170/100. Blood tests revealed a reduced platelet count in the three-plus range of abnormality. The nurses noted no fetal heart tones.

The foregoing results of examination indicate a likelihood of fetal death, severe pre-eclampsia, and a potential inability of the blood to clot. Surgery (hysterotomy) was indicated.

Notwithstanding the foregoing, respondent failed to order an immediate ultra-sound study, and an immediate coagulation study. Her failure to do so constituted extreme departures from the standard of obstetrical care as it existed in Southern California in 1982.

VI

All other allegations of the accusation upon which no specific findings have been made hereinabove have either not been proved, or if proved, constitute single instances of ordinary negligence, or fail to provide a basis for disciplinary action for other reasons.

VII

Respondent's evidence either failed to controvert or explain the evidence underlying Findings IV and V above, or was evasive, inconsistent or otherwise non-persuasive.

Respondent produced three sets of office records at the trial which were inconsistent. Because of the lapse of time, and the extensive litigation that was involved in the civil case, many documents were copied, and recopied. Respondent's explanation of the discrepancies in her records was less than satisfactory, but all things considered, she is given the benefit of the doubt. In any event, there is no positive evidence that respondent intentionally altered any records.

VIII

Since the events of 1982, the transactions at issue in this case have been the subject of civil litigation that was concluded late in 1990. This action ensued. There is no evidence that its prosecution was unreasonably delayed, or that respondent was prejudiced in any respect by any delay in its prosecution.

IX

Respondent testified that today she would do nothing different in the care of a case like L.R.'s. She is unwilling to be on probation, to be supervised by a proctor, to take a written examination or an oral clinical examination.

X

Respondent has not been in medical practice for some time. While there is some evidence that she dabbles in real estate, there is no evidence as to her income, or her ability to respond in damages.

DETERMINATION OF ISSUES

Respondent's certificate is subject to discipline pursuant to Section 2234(b) of the Business and Professions Code for her unprofessional conduct evidenced by the facts set forth in Findings IV and V above.

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ORDER

Physician's and Surgeon's Certificate No. A-22762
heretofore issued by the Medical Board of California to DOLORES
AGUILAR, M.D. is hereby revoked.

August 17, 1993



PAUL M. HOGAN
Administrative Law Judge
Office of Administrative Hearings

DANIEL E. LUNGREN
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ELISA B. WOLFE
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Telephone: (213) 897-2555

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	Board Case No.D-4990
Against:)	
DOLORES AGUILAR, M.D.)	OAH Case No.
800 West 1st Street, #710)	
Los Angeles, California 90012)	
Physician's and Surgeon's)	A C C U S A T I O N
Certificate No. A22762,)	
Respondent.)	

KENNETH J. WAGSTAFF ("Complainant"), for causes for
discipline, alleges:

PARTIES

1. Complainant makes and files this accusation in his
official capacity as Executive Director of the Medical Board of
California, Department of Consumer Affairs, State of California.

1 2. On or about March 29, 1968, the Medical Board of
2 California issued Physician's and Surgeon's Certificate No.
3 A22762 to DOLORES Y. AGUILAR, M.D. ("respondent"). Said
4 certificate was, at all times mentioned herein, in full force and
5 effect. The certificate currently is in a retired status.

6
7 JURISDICTION

8 3. Business and Professions Code ("B&P") §2220 re-
9 quires that the Division of Medical Quality of the Medical Board
10 of California shall enforce and administer the provisions of
11 Article 12^{1/} of the Medical Practice Act^{2/} as to all holders of
12 physician's and surgeon's certificates.

13 4. B&P §2234 provides in relevant part that:

14 "The Division of Medical Quality shall take action
15 against any licensee who is charged with unprofessional con-
16 duct. In addition to other provisions of this article, un-
17 professional conduct includes, but is not limited to, the
18 following:

19 ...

20 "(b) Gross negligence.

21 "(c) Repeated negligent acts.

22 "(d) Incompetence.

23 "(e) The commission of any act involving dishonesty or
24 corruption which is substantially related to the qualifica-
25 tions, functions, or duties of a physician and surgeon..."

26 1. Business and Professions Code sections 2220-2319.

27 2. Business and Professions Code section 2000 et seq.

1 5. B&P §2261 states that, "Knowingly making or
2 signing any certificate or other document directly or indirectly
3 related to the practice of medicine or podiatry which falsely
4 represents the existence or nonexistence of a state of facts,
5 constitutes unprofessional conduct."

6 6. B&P § 2262 declares that, "Altering or modifying
7 the medical record of any person, with fraudulent intent, or
8 creating any false medical record, with fraudulent intent,
9 constitutes unprofessional conduct..."

10
11 IN RE: L.R.

12 7. L.R.^{3/} was a female adult individual who expired
13 on November 14, 1982.

14 8. On or about August 10, 1982, L.R. sought
15 respondent's obstetrical services for medical care in connection
16 with L.R.'s pregnancy.

17 9. L.R. was under the care and management of
18 respondent at all times from her first visit to respondent for
19 obstetrical care on August 10, 1982 until her death on November
20 14, 1982.

21 10. In the course of her care of L.R., respondent
22 neglected to monitor the (lack of) growth of patient's fetus
23 (e.g., via ultrasound) and establish a valid gestational date.

24 /

25 /

26
27 3. For privacy reasons only the initials of this patient
will be used in this accusation. The full name will be provided
to respondent in discovery upon request.

1 11. Respondent failed to detect or diagnose that
2 patient's fetus had died, despite the fact that respondent's
3 examination of L.R. on October 6, 1982 revealed that the fetus
4 was undersized and had no detectable heartbeat.

5 12. Respondent failed to remove the dead fetus from
6 patient's uterus until about four weeks after fetal death.

7 13. On or about November 5, 1982, respondent failed to
8 remove all of the placenta during a hysterotomy (Caesarian
9 section) to remove patient's dead fetus.

10 14. On or about November 7, 1982, L.R. was admitted to
11 Queen of Angel's hospital with symptoms including severe epigas-
12 tric pain, headache and weakness. Respondent failed to order
13 proper diagnostic tests, including "serum fibrinogen" and "fibrin
14 split products" upon L.R.'s admission.

15 15. Respondent failed to properly evaluate, diagnose,
16 manage, or treat L.R. following her November 7th hospital
17 admission. Respondent's failings include but are not limited to:

18 (a) failure to recognize or respond to the severity of L.R.'s
19 preeclampsia and/or L.R.'s other conditions, symptoms, or
20 diagnoses,

21 (b) prescribing of an inadequate amount of magnesium sulfate
22 and/or other medications,

23 (c) failure to prescribe certain medications (e.g., antibiotics
24 following the hysterotomy),

25 (d) failure to transfer L.R. to a perinatal center,

26 (e) failure to call in obstetrical and/or other consultants to
27 aid in the diagnosis, management, and treatment of L.R.

1 16. On November 14, 1982, L.R. expired while an inpa-
2 tient at Queen of Angels Hospital, under the care of respondent.

3 17. Respondent altered L.R.'s medical records, inclu-
4 ding but not limited to, references to fetal heart sounds in
5 L.R.'s October 6, 1982 examination notes, for the purpose of
6 concealing evidence that the fetus appeared dead as of that date.

7
8 CAUSES FOR DISCIPLINARY ACTION

9 18. In connection with the care of L.R., respondent's
10 acts and omissions, as set forth supra, jointly and severally,
11 constitute gross negligence and hence are unprofessional conduct
12 under B&P § 2234(b). Such unprofessional conduct is grounds for
13 disciplinary action against respondent's physician's and
14 surgeon's certificate pursuant to B&P §§ 2234, 2220.

15 19. In connection with the care of L.R., respondent's
16 acts and omissions, as set forth supra, constitute repeated
17 negligent acts and hence are unprofessional conduct under B&P §
18 2234(c). Such unprofessional conduct is grounds for disciplinary
19 action against respondent's physician's and surgeon's certificate
20 pursuant to B&P §§ 2234, 2220.

21 20. In connection with the care of L.R., respondent's
22 acts and omissions, as set forth supra, jointly and severally,
23 constitute incompetence and hence are unprofessional conduct
24 under B&P § 2234(d). Such unprofessional conduct is grounds for
25 disciplinary action against respondent's physician's and
26 surgeon's certificate pursuant to B&P §§ 2234, 2220.

27 /

1 21. Respondent's altering of L.R.'s medical records to
2 conceal evidence regarding the death of the fetus is unprofes-
3 sional conduct under B&P §§ 2234(e), 2261, 2262. Such unprofes-
4 sional conduct is grounds for disciplinary action against
5 respondent's physician's and surgeon's certificate pursuant to
6 B&P §§ 2234, 2220.

7
8 OTHER MATTERS

9 22. B&P §2227 states in pertinent part that:

10 "A licensee whose matter has been heard by the Divi-
11 sion of Medical Quality, ...or by an administrative law
12 judge, or whose default has been entered, and who is found
13 guilty may, in accordance with the provisions of this
14 chapter:

15 "(a) Have his or her certificate revoked upon
16 order of the division.

17 "(b) Have his or her right to practice suspended
18 for a period not to exceed one year upon order of the
19 division...

20 "(c) Be placed on probation upon order of the
21 division...

22 "(d) Publicly reprimanded by the division...

23 "(e) Have such other action taken in relation to
24 discipline as the division...or an administrative law
25 judge may deem proper."

26 /

27 /

23. B&P § 2262 states in pertinent portion that, "In addition to any other disciplinary action, the Division of Medical Quality ... may impose a civil penalty of five hundred dollars (\$500) for a violation of this section."

PRAYER

24. For the reasons set forth in paragraphs 2 through 23, inclusive, of this accusation, good cause exists to impose discipline on the physician's and surgeon's certificate issued to respondent.

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following said hearing, the Board issue a decision:

1. Revoking or suspending Physician and Surgeon
Certificate Number A22762, heretofore issued to respondent
Dolores Aguilar, M.D.;

2. Assessing a penalty of \$500.00 for each violation of B&P § 2262;

3. Taking such other and further action as the Board
deems proper.

DATED: October 14, 1992

KENNETH J. WAGSTAFF
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

1 DANIEL E. LUNGREN
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2 ELISA B. WOLFE
Deputy Attorney General
3 California Department of Justice
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4 Los Angeles, California 90013
Telephone: (213) 897-2555
5 Attorneys for Complainant
6

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DIVISION OF MEDICAL QUALITY**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation)	Board Case No. D-4990
12 Against:)	
13 DOLORES AGUILAR, M.D.)	OAH Case No. L-58933
14 800 West 1st Street, #710)	
15 Los Angeles, California 90012)	S U P P L E M E N T A L
16 Physician's and Surgeon's)	A C C U S A T I O N
17 Certificate No. A22762,)	
18 Respondent.)	

19 DIXON ARNETT ("Complainant"), for further causes for
20 discipline, alleges:

21 **PARTIES**

22 25. Complainant makes and files this Supplemental
23 Accusation solely in his official capacity as Executive Director
24 of the Medical Board of California, Department of Consumer
25 Affairs, State of California.^{5/} This Supplemental Accusation

26
27 5. On or about January 4, 1993, Dixon Arnett became Exec-
utive Director of the Medical Board of California and replaced
Kenneth Wagstaff as the complainant in this matter.

1 sets forth causes for license discipline which are in addition
2 to, and not in lieu of, those alleged in the Accusation on file
3 in this matter.

4 26. On or about March 29, 1968, the Medical Board of
5 California^{6/} issued Physician's and Surgeon's Certificate No.
6 A22762 to DOLORES Y. AGUILAR, M.D. ("respondent"). Said
7 certificate was in full force and effect from the time of its
8 issuance until its expiration on March 31, 1990. On or about
9 April 19, 1991, said certificate was renewed in a retired status
10 and currently is in a retired status.

11

12 JURISDICTION AND LEGAL AUTHORITY

13 27. The allegations of paragraphs 1 through 24,
14 inclusive, of the Accusation on file in this case are realleged
15 as if fully set forth herein.

16 28. Business and Professions Code ("B&P") §2220 re-
17 quires that the Division of Medical Quality of the Medical Board
18 of California shall enforce and administer the provisions of
19 Article 12^{7/} of the Medical Practice Act^{8/} as to all holders of
20 physician's and surgeon's certificates.

21 29. B&P §2234 provides in relevant part that:

22 "The Division of Medical Quality shall take action
23 against any licensee who is charged with unprofessional con-
24 duct. In addition to other provisions of this article, un-

25

26 6. Then titled "Board of Medical Quality Assurance."

27 7. Business and Professions Code sections 2220-2319.

8. Business and Professions Code section 2000 et seq.

1 professional conduct includes, but is not limited to, the
2 following:

3 ...

4 "(e) The commission of any act involving dishonesty or
5 corruption which is substantially related to the qualifica-
6 tions, functions, or duties of a physician and surgeon..."

7
8 KNOWING AND INTENTIONAL MISREPRESENTATIONS TO
9 THE U.S. BANKRUPTCY COURT

10 30. L.R.⁹ was a female adult individual who expired
11 on November 14, 1982. The facts regarding the obstetrical
12 treatment and ultimate death of L.R. are set forth in the
13 Accusation on file in this matter.

14 31. In 1983, L.R.'s children and widower brought a
15 civil lawsuit against respondent and others for wrongful death of
16 L.R. and medical malpractice. All defendants settled or were
17 dismissed except respondent. Following trial in late 1988 and
18 early 1989, the trier of fact found that respondent failed to
19 meet the applicable standard of care in her management of L.R.'s
20 pregnancy and that respondent subsequently altered L.R.'s medical
21 records, in effort to cover up her medical mismanagement. The
22 trier of fact awarded the plaintiffs approximately \$192,474.00 in
23 damages.

24 32. Following the malpractice judgment in their favor,
25 plaintiffs commenced efforts to enforce the civil judgment

26
27 9. For privacy reasons only the initials of this patient
will be used in this accusation. The full name will be provided
to respondent in discovery upon request.

1 against respondent and to collect the monetary award. Respondent
2 proceeded to file bankruptcy. Respondent's case, filed in the
3 United States Bankruptcy Court of the Central District of
4 California, is entitled In Re: Dolores Y. Aguilar, M.D. and bears
5 Case No. LA-90-24117-KL.

6 33. Respondent owns or owned rental property located
7 at 9950 Durant. Although respondent had not lived at the Durant
8 property since 1979, respondent knowingly and intentionally rep-
9 resented to the bankruptcy court in 1990 that she currently
10 resided at the Durant property. Respondent made this knowing and
11 intentional misrepresentation just before the Durant property was
12 to be sold in satisfaction of the civil judgment.

13 34. Because of respondent's knowing and intentional
14 misrepresentation to the bankruptcy court regarding the Durant
15 property, as well as her knowing and intentional misrepresenta-
16 tion of other matters, the Honorable Kathleen T. Lax, United
17 States Bankruptcy Judge, ruled on September 9, 1992, that "the
18 Debtor is not entitled to a discharge of her debts ... the Debtor
19 knowingly and intentionally misrepresented her place of residence
20 in order to gain a (perceived) advantage in connection with the
21 case ..."

22 Cause for Disciplinary Action

23 35. Respondent's knowing and intentional misrepresen-
24 tation(s) of material fact(s) to the bankruptcy court in connec-
25 tion with enforcement of a medical malpractice judgment consti-
26 tute dishonest and/or corrupt acts which are substantially rela-
27 ted to the qualifications, functions, or duties of a physician

1 and surgeon. Such acts and omissions are unprofessional conduct
2 under B&P § 2234(e). Such unprofessional conduct is grounds for
3 disciplinary action against respondent's physician's and
4 surgeon's certificate pursuant to B&P §§ 2234, 2220.

5
6 OTHER MATTERS

7 36. B&P §2227 states in pertinent part that:

8 "A licensee whose matter has been heard by the Divi-
9 sion of Medical Quality, ...or by an administrative law
10 judge, or whose default has been entered, and who is found
11 guilty may, in accordance with the provisions of this
12 chapter:

13 "(a) Have his or her certificate revoked upon
14 order of the division.

15 "(b) Have his or her right to practice suspended
16 for a period not to exceed one year upon order of the
17 division...

18 "(c) Be placed on probation upon order of the
19 division...

20 "(d) Publicly reprimanded by the division...

21 "(e) Have such other action taken in relation to
22 discipline as the division...or an administrative law
23 judge may deem proper."

24 /
25 /
26 /
27 /

PRAYER

37. For the reasons set forth in paragraphs 1 through 36, inclusive, of the Accusation and Supplemental Accusation, good cause exists to impose discipline on the physician's and surgeon's certificate issued to respondent.

WHEREFORE, complainant prays that a hearing be held upon the Accusation and Supplemental Accusation on file herein, and that the Division of Medical Quality of the Medical Board of California make its order:

1. Revoking or suspending Physician and Surgeon Certificate Number A22762, heretofore issued to respondent Dolores Aguilar, M.D.;

2. Assessing a penalty of \$500.00 for each violation of B&P § 2262;

3. Taking such other and further action as the Board deems proper.

DATED: May 27, 1993.

for Eusebio Wolfe DAG
DIXON ARNETT
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant